STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 14, 2003
v	No. 236378 Iosco Circuit Court
JASON JOSEPH SELEWSKI, a/k/a JAYSON JOSEPH SELEWSKI, Defendant-Appellant.	LC No. 01-004178-FH

Before: Murray, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of aiding and abetting second-degree home invasion, MCL 750.110a(3). He was sentenced as an habitual offender, fourth offense, MCL 769.12, to a prison term of nine to thirty years. Defendant appeals as of right. We affirm.

Defendant argues that the prosecution presented insufficient evidence to support his conviction. Defendant does not dispute that Deborah Gibson committed second-degree home invasion, but contends that he was merely present at the time.

In reviewing the sufficiency of the evidence, this Court must view the evidence de novo in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999); *People v Lueth*, ___ Mich App ___; ___ NW2d ___ (Docket No. 226717, rel'd 11/1/02) slip op p 4. However, this Court should not interfere with the jury's role of determining the weight of evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 478, amended 441 Mich 1201 (1992); *People v Elkhoja*, 251 Mich App 417, 442; 651 NW2d 408 (2002). It is for the trier of fact rather than this Court to determine what inferences can be fairly drawn from the evidence and to determine the weight to be accorded to the inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). A prosecutor need not negate every reasonable theory of innocence, but must only prove his own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant provides. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

The elements comprising home invasion include either (1) the breaking and entering a dwelling with the intent to commit a felony or larceny therein or (2) entering a dwelling without

permission with the intent to commit a felony or larceny therein. *People v Warren*, 228 Mich App 336, 347-348; 578 NW2d 692 (1998), aff'd in part and rev'd in part on other grounds in *People v Warren*, 462 Mich 415; 615 NW2d 691 (2000). In this case, the prosecution advanced an aiding and abetting theory. In Michigan, there is no distinction between principles and accessories for purposes of establishing culpability. *People v Lawton*, 196 Mich App 341, 352; 492 NW2d 810 (1992). Thus, one who "counsels, aids, or abets in the commission of an offense may be tried and convicted as if he had directly committed the offense." *People v Smielewski*, 235 Mich App 196, 203; 596 NW2d 636 (1999). For purposes of a motion for a directed verdict, circumstantial evidence and reasonable inferences drawn there from will suffice to establish the essential elements of a crime. *Schultz, supra* at 702.

Here, the prosecution put forth sufficient circumstantial evidence that considered in its totality was sufficient to find defendant guilty as an aider and abettor beyond a reasonable doubt. There is no dispute that defendant and Gibson arrived together in a car at the complainant's house and that Gibson committed a second-degree home invasion. The prosecutor presented evidence that defendant arrived at the complainant's house, got out of the car, looked around, picked up a piece of asphalt material and tossed it, and then got back into the car. Gibson then exited the car and walked toward the complainant's house.

Defendant was sitting in the idling car in the driveway when the complainant's brother, Todd, confronted him and asked him what he was doing. Defendant stated that the car was broken down. When Todd questioned the response in light of the fact that the car was running, defendant asked Todd who he was and why he was there. When Todd indicated that he was the homeowner's brother, defendant drove off. Defendant left the driveway, turned around, and came back in the direction of the complainant's house. Evidence was presented that defendant drove back and forth at least twice. That the prosecutor did not present any direct evidence placing defendant in the complainant's home is of no great moment. Upon review of the record, we find that the prosecutor came forth with sufficient circumstantial evidence upon which a rational trier of fact could have found that defendant aided and abetted Gibson in perpetrating the home invasion.

Defendant's argument that the trial court erred in denying his motion to quash need not be analyzed because a magistrate's erroneous conclusion that sufficient evidence was presented at the preliminary examination is rendered harmless by the presentation at trial of sufficient evidence to convict. *People v Libbett*, 251 Mich App 353, 357; 650 NW2d 407 (2002).

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald